

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

GERALDINE CHEE, Individually
And As Next Friend of LEANDREW
ETSITTY, A Minor,

Plaintiff,

Vs.

No. 1:11-CV-00230 ACT/WDS

UNITED STATES OF AMERICA,

Defendant.

REPORT AND RECOMMENDATION TO APPROVE SETTLEMENT
BENEFITTING MINOR CHILD

THIS MATTER came before the Court upon the stipulation of a proposed settlement benefitting a minor child. The Court having heard from the parties, having reviewed the written and oral report from the court-appointed Guardian *ad litem*, and having considered all of the issues raised in the pleadings, and being fully advised hereby finds:

1. The facts at issue in this case arise from events occurring on May 28, 2010 at the Western Skies Mobile Home Park in Gallup, New Mexico, when Lawrence Etsitty he drove over his son, Leandrew Etsitty, who was 5 years old at the time.
2. Leandrew suffered multiple injuries and underwent multiple surgeries during the course of his hospital stay. The child continues to suffer significant and permanent effects from the accident.
3. This action was pursued by Leandrew's mother, the Plaintiff Geraldine Chee, pursuant to Rule 17(c) of the Federal Rules Of Civil Procedure. Ms. Chee faithfully and effectively fulfill her duties to the child and the court in her capacity as next friend for the minor child.


4. The child's father, Lawrence Etsitty, does not have standing to disrupt or otherwise challenge the proposed settlement in this matter, as the plaintiff is the duly appointed representative of the child in all matters related to the accident at issue in this lawsuit.
5. Plaintiff Geraldine Chee waived all claims she may have had in her individual or personal capacity for damages she may have been entitled to under the law, for negligent infliction of emotional distress, bystander liability, or under any other theory or claim.
6. All proceeds of the proposed settlement shall benefit the minor child.
7. The terms of settlement were fairly and honestly negotiated.
8. Serious questions of law or disputes of fact exist, placing the ultimate outcome of litigation in doubt.
9. The value of an immediate and swift recovery outweighs the mere possibility of greater future relief after protracted and expensive litigation.
10. The settlement of all claims for the amount of \$100,000 (one hundred thousand dollars) is fair and reasonable, in its effect on the minor child, considering all of the factual and legal obstacles the Plaintiff would have had to overcome prevail in this matter.
11. The attorneys fees and costs charged by Plaintiffs counsel are fair and appropriate under the circumstances.
12. The net proceeds of the settlement benefitting the minor child, after deductions for fees, costs, and negotiated segregated medical interests, should be placed in

a conservatorship established under New Mexico state law, (N.M.S.A. 1978 § 45-5-401 et. seq.) with the Plaintiff Geraldine Chee serving as the child's conservator.

13. All parties agree that the terms of the settlement are in the best interest of the child, and there are no objections to the entry of an order approving this settlement forthwith.

Wherefore,

IT IS HEREBY RECOMMENDED that the settlement proposed in this matter, benefitting the minor child Leandrew Etsitty, be approved.



Honorable Karen B. Molzen
Chief United States Magistrate Judge

MARTINEZ, HART & THOMPSON, PC.

/s/ F. Michael Hart
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